(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Writ Petition No. 228/2002

Petitioner: Sundaram Finance Limited, a Company duly incorporated under the relevant Rules of the Company Act, 1956 having its principal business place 21-Pattullos Road, Chennai and interalia amongst other branches, a Branch Office at Devendra Nagar, Raipur.

Vs.

Respondents:

1) State of Chhattisgarh, through its Secretary, Ministry of Forest, Dau Kalyan Singh Bhawan, Raipur.

2) The Conservator of Forests, Jail Road, Raipur Circle, Raipur.

3) The Sub-Divisional Officer, Mariyaband, District Raipur.

4) M/s Kamal Kirana Stores, Bus-Stand, ariyaband, Raipur.

S.R. No. 228/02 Presented by Shri L.R. Sahu dated 20/11/02

WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(65)

आदेश पत्रक

W.P. No. 228/2002

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	30.9.2004 Shri B.P.Sharma, counsel for the petitioner. Shri Bhaskar Pyasi, Panel Lawyer for the State/respondents No. 1 to 3. Heard. The petitioner, which is a Finance Company, has preferred this writ petition under Article 226/227 of the Constitution of India being aggrieved by the order dated 15.5.2000 passed by the Respondent No. 3 and confirmed in appeal by the Respondent No. 2. The relevant facts for disposal of this writ petition are that one Swaraj Mazda vehicle having registration No. MP-23/D-9880 was found carrying 24 numbers of forest produce namely Beeja sleepers on 2.12.1999 at about 11.45 am near forest check post, Gariaband. A perusal of the order dated 15.5.2000 shows that when this vehicle reached to the forest Check-post Gariyaband and intercepted by the Assistant Forest Officer Shri D. K. Saxena it was found that Kamal Chand Gupta, proprietor of Kamal Kirana Stores, Rudreshwar Sahu were sitting in the vehicle and the vehicle was being driven by Virendra Singh, 24 number of Bija sleepers were kept in the truck below the bags of paddy, therefore the truck was taken to the forest check post Gariaband and proceeding under the provisions of Chhattisgarh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 was initiated and vide impugned	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(66)

आदेश पत्रक

मामला क्रमांक 228/2002 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

order dt. 15.5.2000 the Prescribed authority confiscated the truck and the forest produce in question.

Aggrieved by the order of confiscation the Respondent No.4 preferred appeal which came to be dismissed vide order dt. 29.12.2000 by the Appellate Authority and thereafter the revision filed by the Respondent No.4 was also dismissed vide order dated 24.8.2001 passed by the Sessions Judge, Raipur.

The petitioner – Finance Company has preferred this writ petition on the ground that the said vehicle was financed by the petitioner-company and the Respondent No.4 was the higher purchaser of the vehicle therefore without issuing a notice to the petitioner-company, which has **some interest** in the vehicle, the Prescribed Authority was not entitled to confiscate the vehicle.

The fact that the vehicle in question was financed by the petitioner-company has not been disputed by the respondents and even the registration certificate, a copy of which is Annexure P/3, shows that the vehicle was registered in the name of the Respondent No.4 but in the column No. 13 "Purchased under hire Purchase Agreement with" – it has been specifically mentioned by the Registration Authority that the vehicle in question was purchased under the Hire Purchase Scheme with the M/s Sundram Finance Ltd.

The provisions of sub-section 5(b) of Section 15 envisaged that 'No order confiscating any property shall be made unless the authorized officer issues a notice in writing to the person from

(69)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक 228/2002 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

whom the property is seized, and to any other person who may appear to the authorized officer to have **some interest** in such property.

It is an admitted position that the vehicle in question was financed by the petitioner (herein) and its name was also mentioned in the registration certificate, therefore the petitioner herein has definite vested interest in the vehicle because finance of the petitioner-company was involved, therefore, undoubtedly, under the said provision the Prescribed Authority ought to have issued notice to the petitioner-company before proceeding with the confiscation proceedings and admittedly it was not done by the learned Prescribed Authority.

Learned Panel Lawyer argued that the petitioner-company remained silent for such a long period and it ought to have taken immediate steps when the confiscating proceedings were going on. But, unless the petitioner-company was informed how it could know about the confiscating proceedings. Had the Prescribed Authority applied its mind and perused the registration certificate from which it is evident that the vehicle in question was on hire purchase from the petitioner-company, the Prescribed Authority, in my opinion, would not have committed this mistake. Therefore, the confiscation Proceedings in question suffers from the compliance of the provisions of sub-section (5) (b) of Section 15 of the Act, 1969.

In view of what has been discussed herein above, the petition is allowed. The confiscation proceedings in question including the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(68)

आदेश पत्रक

228/2002

मामला क्रमांक ..... सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	order passed in appeal and revision are liable to be quashed and are hereby quashed. However, it is made clear that the Prescribed Authority is not precluded from proceeding with the confiscation proceedings from the stage of issuance of the notice to the petitioner (herein). Certified copy as per Rules. Sd/- L.C.BHADOO Judge	